

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201109

Adele J Pope	Gloria P Corley M L Corley Marital Trust	Samuel M Corley
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	8/27/2013
Circuit Court Judge	Judge Code
	Date

For Clerk of Court Office Use Only

This judgment was entered on 8/27/2013, and a copy mailed first class or placed in the appropriate attorney's box on 8/27/2013, to attorneys of record or to parties (when appearing pro se) as follows:

Adam Tremaine Silvernail
PO Box 1898
Columbia, SC 29202-1898

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Columbia, SC 291716338
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/ppb

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2011-CP-32-1109

Adele J. Pope,

Plaintiff

vs.

Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, Defendants.

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**ORDER GRANTING JUDGMENT
TO PLAINTIFF ADELE J. POPE
AS TO CLAIMS AGAINST
GLORIA P. CORLEY**

This matter came before me on July 15, 2013 for a damages hearing to set the amount due to Plaintiff Adele J. Pope ("Plaintiff") as a result of Defendant Gloria P. Corley's ("Mrs. Corley") breach of contract. By Orders dated February 13, 2013 and May 14, 2013, the Honorable Frank R. Addy, Jr. found that the fee agreement at issue was valid and enforceable. For the reasons set out below, the Court finds that Plaintiff is entitled to a judgment against Mrs. Corley in the amount of \$248,673.87.

Findings of Fact and Conclusions of Law

This case was commenced by the filing of a Summons and Complaint on March 21, 2011. Pope sought to enforce her rights under a fee contract dated August 28, 1998 (the "fee contract") and an Agreement Among Successors dated January 22, 1999 (the "Corley Agreement").

Under the fee contract, Plaintiff is entitled to:

ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY [Mrs. Corley receives] from [her] husband's Estate or Trust and/or

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his family in excess of \$7,500 per month (\$90,000 per year)
FOR THE REST OF [Mrs. Corley's] LIFE OR RECEIVED BY [her]
ESTATE....

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Additionally, the Corley Agreement included the following provision:

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LEWISTON, SC

ARTICLE VI
IRREVOCABLE DESIGNATION BY SPOUSE OF
AGENT TO RECEIVE PROCEEDS


1. Except for the monthly \$7,500 payments, which shall be made directly to her, Mrs. Corley irrevocably designates Adele J. Pope as her agent to receive and disburse all amounts payable to her under the Will, the Marital Trust and/or this Agreement.

Both of these contracts had been in force for more than a decade at the time this litigation began, and both had been honored until Mrs. Corley's agent attempted to circumvent both in early 2011. Plaintiff has testified extensively in her deposition and affidavits¹ regarding her representation of Corley and the collection and disbursement of amounts due to Plaintiff and Mrs. Corley over the more-than 10 years since the Settlement. Mrs. Corley has introduced no factual testimony other than an affidavit of A. Hoyt Rowell, Esquire.²

In 1997 Mrs. Corley engaged Plaintiff on an hourly basis to represent her in relation to the

¹ Included with Plaintiff's affidavits are numerous exhibits comprised of historical documents and correspondence generated during Plaintiff's representation of Mrs. Corley and over the years since.

² Although Mr. Rowell's affidavit purports to bear on certain facts of this case, it also plainly states that Mr. Rowell has little independent memory of the facts and has not reviewed the relevant documents. Judge Keesley struck a portion of Mr. Rowell's affidavit because it contained what appeared to be expert testimony from a fact witness.


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estate of Mrs. Corley's third husband, M. L. Corley ("Decedent"), who had recently died. The matter was both factually and legally complex. In addition to other assets, Decedent owned over 10 acres on Lake Murray, and a number of large tracts along Highway 378 between Columbia and Lexington. His first wife, to whom he had been married for many years, had predeceased him.

Mrs. Corley did not have a close relationship with Decedent's children. One of Decedent's children, Sam ("Trustee"), is the trustee of the trust established by Decedent's will. Trustee and Theron Peace, Decedent's accountant, were Decedent's personal representatives. Decedent's fiduciaries were represented by litigator Keith Babcock, Esquire, and tax attorneys Robert Young, Esquire and David Siddons, Esquire. Plaintiff was Mrs. Corley's sole attorney.

At the time of the engagement, Plaintiff held an LLM in Estate Planning from the University of Miami and had practiced law for more than 20 years. The fee agreement provided for attorney's fees and costs of collection. It also provided that Plaintiff could speak freely about the matter with Mrs. Corley's daughter Angie or son Hoyt ("Son"), an attorney. The fee agreement included an acknowledgement that Son served as Mrs. Corley's personal attorney and approved the Fee Contract. Although the record does not contain a copy of this document signed by Son, both Mrs. Corley and her Attorney-in-Fact acknowledged that fact by signing the agreement.

Mrs. Corley's goal was to receive regular income "beginning as soon as possible," but there were substantial impediments to this goal. Although Plaintiff worked vigorously, attempts to speed up this process met with considerable resistance from Decedent's fiduciaries and their attorneys. Plaintiff kept Mrs. Corley and Son informed of what actions she was taking and the

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resistance with which it was being met.

In July 1998, with hearings scheduled, Mrs. Corley notified Plaintiff that she was too ill to continue the litigation and that her doctor directed that she immediately withdraw. Plaintiff immediately notified the court and other parties of Mrs. Corley's illness, withdrew the actions filed on behalf of Mrs. Corley, and notified the parties of Plaintiff's termination. Approximately three weeks later Plaintiff learned that Mrs. Corley's doctor had not directed her to stop the litigation, but that Mrs. Corley had decided to negotiate with the trust on her own.

By August 1998, Son was in contact with Plaintiff regarding Mrs. Corley's failed negotiations and requesting that Plaintiff take Mrs. Corley back as a client. Plaintiff, in light of Mrs. Corley's unwillingness or inability to bear the ongoing and substantial costs of a full representation on an hourly basis, proposed at least two alternatives. She offered to be engaged on a limited basis as a consultant to Son, who would act as Mrs. Corley's attorney. Alternatively, she was willing to work under a contingency-fee agreement. Mrs. Corley elected the contingency fee agreement. Although Mrs. Corley had not secured any agreement for herself after terminating Plaintiff, the contingency fee relates only to amounts over \$90,000 per year Plaintiff was able to secure for Mrs. Corley.

Plaintiff then engaged in negotiations with counsel over fiduciary income and trust concepts and the best way to make Decedent's multi-million dollar estate and trust work for Mrs. Corley and Decedent's children. In January 1999, a detailed agreement was reached, presented to the court, and approved. The settlement, which was thoroughly reviewed by Mrs. Corley and her family, provided Mrs. Corley with a guaranteed income of \$145,000 for the rest of her life provided she take no active role in the trust except to allow her own accountant to

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review the annual reports. \$90,000 was disbursed directly to Mrs. Corley each year, in monthly installments. The remainder, at least \$55,000, was paid directly to Plaintiff, as the irrevocably designated agent to receive and disburse, and was intended to be the source of the payment of Plaintiff's fees within the framework set out in the Corley Agreement.

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After the approval of the settlement, the estate was wound up and closed within a couple of years. On a few occasions, Trustee made the check out directly to Mrs. Corley rather than to Plaintiff as agent for Mrs. Corley. The Trustee always delivered the checks to Plaintiff. Aside from these minor mistakes, Trustee fully complied with the agreement until after this suit was filed. On those instances where the check was improperly made out, Mrs. Corley signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Mrs. Corley-- after payments to Plaintiff-- retained at least \$125,000 per year. Plaintiff received annual payments of approximately \$18,333. The contingency fee paid to Plaintiff each year was less than 15% of the \$145,000 she secured for Mrs. Corley.

At one point shortly after the settlement, Mrs. Corley wrote Trustee and directed him to pay the annual check directly to her. Plaintiff engaged John Freeman, Esquire to assist her; Professor Freeman contacted Son and the matter was corrected. However, in March 2011 Mrs. Corley's attorney-in-fact took the check from Plaintiff and announced that she was now in charge and that she would pay Plaintiff what she felt like paying. Plaintiff filed this suit the following week.

Plaintiff and Mrs. Corley filed cross-motions for summary judgment. The court denied

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Mrs. Corley's motions and granted Plaintiff's in a form 4 order dated February 13, 2012. Mrs. Corley sought reconsideration of that Order, but the court affirmed its findings by Order dated May 14, 2013. It also ordered a damages hearing, noting that "complicating factors" had arisen during this litigation.

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Developments During this Litigation


In 2012, more than a year after this action was commenced, the Trustee and Mrs. Corley's attorney-in-fact reached an agreement to terminate Mrs. Corley's payments under the Corley Agreement in exchange for a lump sum paid to Mrs. Corley in 2012. Despite the pendency of this action, to which both Mrs. Corley and Trustee are parties, Trustee made one or more substantial distributions to Mrs. Corley in contravention of the Corley Agreement which he had honored for more than a decade.

No notice was given to Plaintiff or this Court of the 2012 agreement, and Plaintiff's counsel discovered the agreement in the Probate Court in August 2012.

The 2012 agreement purports to terminate Mrs. Corley's interest in the Trust in exchange for a single, immediate³ payment of \$650,000. According to the terms of the 2012 agreement, Mrs. Corley had already received \$22,500 from the Trust in 2012. Thus, the total amount distributed to Mrs. Corley by the Trust in 2012 was \$672,500.

The Fee Agreement provides that Plaintiff's fee will be "ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month," and Plaintiff has consistently taken the position that she

³ Although issues arose as to the timing of the payment, all amounts due to Mrs. Corley under the 2012 Agreement were undisputedly paid in 2012.

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is entitled to a corresponding fee from the proceeds received by Mrs. Corley in 2012.


Judge Addy has previously concluded that the fee contract between Plaintiff and Mrs. Corley is valid and enforceable, and that contract provides that Plaintiff is entitled to 1/3 of all amounts received by Mrs. Corley beyond \$90,000 per year from the Trust. The Trustee continues to hold the payment originally issued in 2011 of \$55,000, which should have been received and disbursed by Plaintiff in accordance with the Corley Agreement and Fee Contract. Plaintiff is entitled to \$18,333.33 from that payment, in addition to the amounts set out below. In the complaint herein, Plaintiff requested pre-judgment interest on this amount. Because Plaintiff's fee from the 2011 payment is a sum-certain, she is entitled to pre-judgment interest at the legal rate. *See Dixie Bell, Inc. vs. Redd*, 376 S.C. 361, 656 S.E.2d 765 (Ct. App. 2007).

Instead of the customary \$55,000 lump-sum payment to Mrs. Corley in 2012, the Trustee distributed \$650,000 to Mrs. Corley in exchange for Mrs. Corley's relinquishing her rights under the Corley Agreement to any future payments. This amount was distributed in addition to \$22,500 in monthly payments to Mrs. Corley, so that Mrs. Corley received \$672,500 in distributions in 2012.

Although the propriety and effect of the 2012 transactions are in dispute, no party disputes that Mrs. Corley received \$672,500 from the Trust in 2012. Thus, Plaintiff asserts that she is entitled to 1/3 of \$582,500 under the Fee Agreement.

Upon receipt of the 2012 payment, Mrs. Corley had received more than \$2 million from the Trust as a result of Plaintiff's efforts. Plaintiff's total fee, if the Fee Agreement is applied to the 2012 distributions to Mrs. Corley, will be approximately \$420,000.

Mrs. Corley argued that there are both questions of law and fact as to whether the fee

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agreement between Plaintiff and Mrs. Corley applied to the 2012 disbursement. Plaintiff asserts that she is entitled to 1/3 of \$582,500 under the Fee Agreement. I find that the contract at issue is unambiguous, and Plaintiff is entitled to damages based on the amounts paid to Mrs. Corley in 2012. The 2012 settlement agreement explicitly references the Corley Agreement in calculating the lump-sum payment to Mrs. Corley, and I find that the 2012 payment flows directly from the settlement Plaintiff negotiated more than a decade ago.

The above-quoted language in the contract plainly states that Plaintiff's fee shall be calculated as 1/3 of amounts beyond \$90,000 per year received by Mrs. Corley, and the Court has previously found the contract to be enforceable. "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *C.A.N. Enterprises, Inc. v. South Carolina Heath and Human Services Finances Com'n*, 373 S.E.2d 584, 296 S.C. 373 (1988).

Mrs. Corley also argued that damages could not be awarded to Plaintiff based on the 2012 payments, because Plaintiff's complaint had sought to enforce the contract in the context of the March 2011 payment. The complaint herein sought to enforce the fee contract, and the Court has found the contract to be enforceable. The 2012 payments were negotiated a year after this action was commenced, and Mrs. Corley was on notice of Plaintiff's proceeding to enforce the contract. To allow circumvention of the contract under these circumstances would be unjust, and I find that the damages set out below are appropriate.

Calculation of Damages

Counsel for Mrs. Corley conceded at the hearing that Plaintiff is entitled to her fee of \$18,333.33 from the payment issued in March 2011. Additionally, Mrs. Corley concedes that

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Plaintiff is entitled to prejudgment interest and reasonable attorneys' fees under the contract.

I find that Plaintiff, in addition to the amounts due from the 2011 payment, is entitled to \$194,166.66 as a result of the 2012 distribution, and I find that this fee remains reasonable under the analysis set out in Judge Addy's Order Denying Motion for Reconsideration. Because this is also a sum-certain, Plaintiff is entitled to pre-judgment interest from January 1, 2013.⁴

The Fee Agreement further provides that Plaintiff is entitled to the reasonable costs of collecting any amounts due under the Fee Agreement, including attorneys' fees. This action to enforce the Fee Agreement and collect the fees due was necessitated by the conduct of Mrs. Corley, through her Attorney-in-Fact. Counsel for Plaintiff has presented an affidavit showing he has spent 125.5 hours on this matter to date and Plaintiff has expended \$1,082 in costs. Plaintiff's counsel asks that Plaintiff be awarded \$25,100 in attorneys' fees in connection with this action to date, plus the costs incurred.

Under the factors set out in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), I find that this fee is reasonable. The record shows that this matter was commenced more than 2 years ago, and Plaintiff's counsel has diligently pursued it through discovery, mediation and hearings. This matter, although initially straightforward, was both complicated and drawn out by Mrs. Corley's actions and the 2012 agreement with the Trust and Sam. As set out in this Order, counsel has obtained beneficial results for Plaintiff.

An award of \$25,100 would compensate Plaintiff's counsel at a rate of \$200/hour, which is in line with Mr. Silvernail's experience and time in practice.

⁴ Although the record does not show the exact date Mrs. Corley received the 2012 payment(s), all were received by the end of that year.

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I find that \$26,182 in fees and costs, plus any additional fees and costs incurred in collecting the amounts due under this Order, is a reasonable award and should be taxed to Mrs. Corley under the fee agreement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff is granted judgment against Gloria P. Corley for the following amounts in actual damages, interest and attorneys' fees and costs:

Fee due Plaintiff from the March 2011 Payment	\$ 18,333.33
Fee due Plaintiff from payments to Mrs. Corley in 2012	\$194,166.66
Pre-judgment interest on above amounts	\$ 9,961.88 ¹
Attorneys' fees and costs to date ²	<u>\$ 26,182.00</u>
Total	\$248,673.87

Additionally, Plaintiff is granted daily interest in the amount of \$42.21 from July 15, 2013 to the date of this Order, and such additional reasonable and necessary costs of collection as are provided in the fee contract.

AND IT IS SO ORDERED.

August
~~July~~ 21, 2013

Orangeburg, South Carolina



Edgar W. Dickson

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¹ This includes \$2,923.34 in interest on the \$18,333.33 from March 15, 2011 through July 1, 2013, and \$7,038.54 in interest on the \$194,166.66 from January 1, 2013 through July 1, 2013.

² Payable by Mrs. Corley in accordance with the fee contract.